

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

THE PROCTER & GAMBLE COMPANY '
and THE GILLETTE COMPANY, '
'

Plaintiffs, '
'

v. '
'

C.A. No. 06-443 (GMS)
'

SUSAN HARRISON; WILLIAM G. '
HARRISON III, individually and as a '
Trustee for the Harrison Family Trust '
and The Emily Waldrup Trust; '
CINDY NOSSER; KATHY ALLEN; '
PAT ALLEN; TINA HARRISON; '
W.G. HARRISON IV; LARRY '
LUXENBERG; and JOHN SHELTON '
'

DEFENDANTS' MOTION TO DISMISS

Defendants Susan Harrison; William G. Harrison III, individually and as a Trustee for the Harrison Family Trust and The Emily Waldrup Trust; Cindy Nosser; Kathy Allen; Pat Allen; Tina Harrison; W.G. Harrison IV; Larry Luxenberg; and John Shelton (collectively "Defendants"), hereby move to dismiss Plaintiffs' Complaint and in support thereof state the following:

For the reasons set forth with particularity in Defendants' brief filed in connection with this motion, Plaintiffs' Complaint must be dismissed for the reasons set forth below.

1. The Court should apply the "first filed" rule and dismiss all of Procter & Gamble's claims based on the existence of a prior filed suit pending in the Northern District

of Texas (the "Texas Suit").

2. The Court should exercise its discretion and decline to exercise jurisdiction over both Gillette and Procter & Gamble's¹ claims for declaratory relief (§§30-35 of Complaint) because Plaintiffs have improperly attempted to use the Declaratory Judgment Act for the purpose of adjudicating issues already pending in the Texas Suit.

3. The Court should dismiss Procter & Gamble's claim for breach of contract (§§36-43 of Complaint) pursuant to Rule 12(b)(1) because Procter & Gamble does not have standing to assert a claim for breach of the Stock Purchase Agreement ("Agreement") since it is neither a party to the Agreement nor an assignee of Gillette's rights under the Agreement. (asserted in the alternative to the request for dismissal pursuant to the first filed rule).

4. The Court should dismiss the breach of contract claims asserted by both Gillette and Procter & Gamble (§§36-43 of the Complaint) pursuant to Rule 12(b)(6) because Defendants' suit against Procter & Gamble in Texas cannot constitute a breach of the forum selection clause found in the Agreement since Procter & Gamble is neither a party to the Agreement nor an assignee of Gillette's rights under the Agreement, (asserted as to Procter & Gamble only in the alternative to the request that Procter & Gamble's claims be dismissed based on the first filed rule).

¹ Both this request for dismissal of Procter & Gamble's declaratory judgment action and the following requests to dismiss Procter & Gamble's breach of contract claim are asserted in the alternative to the request that the Court dismiss all of Procter & Gamble's claims based on the "first filed" rule.
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WHEREFORE, for the reasons set forth herein and in Defendants' Brief in Support of this Motion, Defendants respectfully request that the Court grant the relief set forth above and dismiss Plaintiffs' Complaint.

Dated: October 10, 2006

LANDIS RATH & COBB LLP

A handwritten signature in black ink, appearing to read 'Daniel B. Rath', is written over a horizontal line.

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CERTIFICATE OF SERVICE

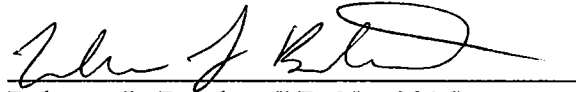
I, Rebecca L. Butcher, Esquire, hereby certify that a true and correct copy of the foregoing Defendants' Motion to Dismiss was served this 10th day of October, 2006, upon the following in the manner indicated:

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